

## § 762.127

## 7 CFR Ch. VII (1–1–14 Edition)

are allowed for both the guaranteed and unguaranteed portions.

(c) *Identifiable security.* The guaranteed loan must be secured by identifiable collateral. To be identifiable, the lender must be able to distinguish the collateral item and adequately describe it in the security instrument.

(d) *Type of security.* (1) Guaranteed loans may be secured by any property if the term of the loan and expected life of the property will not cause the loan to be undersecured.

(2) For loans with terms greater than 7 years, a lien must be taken on real estate.

(3) Loans can be secured by a mortgage on leasehold properties if the lease has a negotiable value and is subject to being mortgaged.

(4) The lender or Agency may require additional personal and corporate guarantees to adequately secure the loan. These guarantees are separate from, and in addition to, the personal obligations arising from members of an entity signing the note as individuals.

(e) *Lien position.* All guaranteed loans will be secured by the best lien obtainable. Provided that:

(1) Any chattel-secured guaranteed loan must have a higher lien priority (including purchase money interest) than an unguaranteed loan secured by the same chattels and held by the same lender.

(2) Junior lien positions are acceptable only if the total amount of debt with liens on the security, including the debt in junior lien position, is less than or equal to 85 percent of the value of the security. Junior liens on crops or livestock products will not be relied upon for security unless the lender is involved in multiple guaranteed loans to the same borrower and also has the first lien on the collateral.

(3) When taking a junior lien, prior lien instruments will not contain future advance clauses (except for taxes, insurance, or other reasonable costs to protect security), or cancellation, summary forfeiture, or other clauses that jeopardize the Government's or the lender's interest or the borrower's ability to pay the guaranteed loan, unless any such undesirable provisions are limited, modified, waived or subordi-

nated by the lienholder for the benefit of the Agency and the lender.

(f) Additional security, or any loan of \$10,000 or less may be secured by the best lien obtainable on real estate without title clearance or legal services normally required, provided the lender believes from a search of the county records that the applicant can give a mortgage on the farm and provided that the lender would, in the normal course of business, waive the title search. This exception to title clearance will not apply when land is to be purchased.

(g) *Multiple owners.* If security has multiple owners, all owners must execute the security documents for the loan.

(h) *Exceptions.* The Deputy Administrator for Farm Loan Programs has the authority to grant an exception to any of the requirements involving security, if the proposed change is in the best interest of the Government and the collection of the loan will not be impaired.

[64 FR 7378, Feb. 12, 1999, as amended at 70 FR 56107, Sept. 26, 2005]

### § 762.127 Appraisal requirements.

(a) *General.* The general requirements for an appraisal are:

(1) *Value of collateral.* The lender is responsible for ensuring that the value of chattel and real estate pledged as collateral is sufficient to fully secure the guaranteed loan.

(2) *Additional security.* The lender is not required to complete an appraisal or evaluation of collateral that will serve as additional security, but the lender must provide an estimated value.

(3) *Appraisal cost.* Except for authorized liquidation expenses, the lender is responsible for all appraisal costs, which may be passed on to the borrower or transferee in the case of a transfer and assumption.

(b) *Chattel security.* The requirements for chattel appraisals are:

(1) *Need for chattel appraisal.* A current appraisal (not more than 12 months old) of primary chattel security is required on all loans except loans or lines of credit for annual production purposes secured by crops, which require an appraisal only when

the guarantee is requested late in the current production year and actual yields can be reasonably estimated. An appraisal is not required for loans of \$50,000 or less if a strong equity position exists.

(2) *Basis of value.* The appraised value of chattel property will be based on public sales of the same or similar property in the market area. In the absence of such public sales, reputable publications reflecting market values may be used.

(3) *Appraisal form.* Appraisal reports may be on the Agency's appraisal of chattel property form or on any other appraisal form containing at least the same information.

(4) *Experience and training.* Chattel appraisals will be performed by appraisers who possess sufficient experience or training to establish market (not retail) values as determined by the Agency.

(c) *Real estate security.* The requirements for real estate appraisals are:

(1) *Loans of \$250,000 or less.* The lender must document the value of the real estate by applying the same policies and procedures as their non-guaranteed loans.

(2) *Loans greater than \$250,000.* The lender must document the value of real estate using a current appraisal (not more than 12 months old) completed by a State Certified General Appraiser. Real estate appraisals must be completed in accordance with USPAP. Restricted reports as defined in USPAP are not acceptable. The Agency may allow an appraisal more than 12 months old to be used only if documentation provided by the lender reflects each of the following:

(i) Market conditions have remained stable or improved based on sales of similar properties,

(ii) The property in question remains in the same or better condition, and

(iii) The value of the property has remained the same or increased.

(3) Agency determinations under paragraph (c)(2) of this section to permit appraisals more than 12 months old are not appealable.

[78 FR 65529, Nov. 1, 2013]

#### § 762.128 Environmental and special laws.

(a) *Environmental requirements.* The requirements found in part 1940, subpart G, of this title must be met for guaranteed OL, FO, and CL. CLP and PLP lenders may certify that they have documentation in their file to demonstrate compliance with paragraph (c) of this section. Standard eligible lenders must submit evidence supporting compliance with this section.

(b) *Determination.* The Agency determination of whether an environmental problem exists will be based on:

(1) The information supplied with the application;

(2) The Agency Official's personal knowledge of the operation;

(3) Environmental resources available to the Agency including, but not limited to, documents, third parties, and governmental agencies;

(4) A visit to the farm operation when the available information is insufficient to make a determination;

(5) Other information supplied by the lender or applicant upon Agency request. If necessary, information not supplied with the application will be requested by the Agency.

(c) *Special requirements.* Lenders will assist in the environmental review process by providing environmental information. In all cases, the lender must retain documentation of their investigation in the applicant's case file.

(1) A determination must be made as to whether there are any potential impacts to a 100 year floodplain as defined by Federal Emergency Management Agency floodplain maps, Natural Resources Conservation Service data, or other appropriate documentation.

(2) The lender will assist the borrower in securing any applicable permits or waste management plans. The lender may consult with the Agency for guidance on activities which require consultation with State regulatory agencies, special permitting or waste management plans.

(3) The lender will examine the security property to determine if there are any structures or archeological sites which are listed or may be eligible for listing in the National Register of Historic Places. The lender may consult